

86-810

Supreme Court, U.S.
FILED

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JOSEPH F. SPANIOLO, JR.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October term, 1986

EDGAR MOSLEY, PETITIONER

V.

TOM BARTMAN, ET AL., RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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38142



QUESTIONS PRESENTED

(1) Whether the district court and appeals court abused their authority in denying petitioner's claim prior to applying the rules that governs the granting of summary judgment F.R.Civ.P. 56(c)

(2) Whether named respondents acting under the color of state violated petitioner rights secured by Fifth, Thirteenth and Fourteenth Amendments of the United States Constitution thereby violating petitioner's rights under 42 U.S.C. 1983.

(3) Whether cases Edgar Mosley v. R. Noel et al., No. 84-6064 DC# 83-5039 is related to Edgar Mosley v. Tom Bartman et al., 85-6293, DC# 85-1812 in accordance to F.R.Civ.P. 13(J) 1,3,4,5, and 6.

(4) Whether the respondents conspired to violate petitioner's rights under 42 U.S.C. 1985

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TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Edgar Mosley, Appellant, petition
for a writ of certiorari to review the
judgment of the United States Court of
Appeals for the Ninth Circuit.

I

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OPINION BELOW

The judgment order of the United States Court of Appeals for the Ninth Circuit, issued without opinion, is set forth in the appendix at pages App.1

The opinion of the United States District Court for the Central District of California is printed in the appendix at pages App. 3

JURISDICTION

The judgment of the court of appeals was entered on July 24, 1986. A petition for rehearing was denied on August 20, 1986. The jurisdiction of this court is invoke under 28 U.S.C. 1254 (2&3)

CONSTITUTIONAL AND STATUTORY

PROVISION INVOLVED

(1) The Fifth Amendment of the United States Constitution provides in

relevant part:

... nor be deprived of life, liberty, or property, without due process of law.

(2) The Thirteenth Amendment of the United States Constitution provides in relevant part:

All persons within the jurisdiction of the United States shall have the same rights in every state and territory ... to the full and equal benefit of all laws and proceedings for the security of the person and property as enjoyed by whites' citizens and shall be subjected to like punishment. Civil Right Acts 1866 and 42 U.S.C. 1981.

(3) The Fourteenth Amendment of the United States Constitution provides in relevant part:

... nor shall any state deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction equal protection of the law.

(4) 42 U.S.C. 1983 Civil action for deprivation of rights provides in pertinent part:

Every person who, under color of any statute, or ordinance ... cause to be subjected, any citizen of the United States ... deprivation of any rights, privileges or immunities secured by the United States Constitution and laws, shall be liable to the party injured in action at law.

(5) Federal Rule of Civil Procedure 56(c) provides in relevant part:

MOTION AND PROCEEDINGS THEREON

The motion shall be served at least 10 days before the time fixed for the hearing...

STATEMENT

This civil rights action was initiated by petitioner in Pro Se on March 15, 1985, against approximately twenty respondents associated with the Los Angeles Unified School District and the Board of Supervisors for the County of Los Angeles.

Petitioner has characterized his 42 U.S.C 1983, action as a complaint for equitable relief in connection with unfair employment practices, in that the respondents were acting under the color of state laws without the authority of state law resulting in their acts constituting intentional deprivation of due process and equal protection of state and federal law. It is also alleged that these respondents conspired to deprive petitioner of his constitutional rights.

On May 7, 1985, respondents' attorney of record, Gordon Trask, County Counsel

filed a motion to dismiss pursuant to F.R.Civ.P. 17(b)6, set for June 3, 1985, On May 21, 1985, respondents filed a motion for a continuance from June 3, 1985 to June 17, 1985. On June 7, 1985, petitioner received a minute order from Judge Laughlin E. Waters, stating that the hearing on respondents' motion to dismiss has been continued from June 17, 1985, to July 29, 1985, at 9:00 a.m. The order additionally asked that respondents submit a brief discussing related issues, and petitioner is to file a response. On June 25, 1985, petitioner received another minute order from the court which stated that the respondents' motion to dismiss set for hearing on July 29, 1985, is hereby submitted as of July 29, 1985, without oral argument. On July 8, 1985, respondent filed their brief and petitioner responded on July 12, 1985. The matter was taken

under submission.

Petitioner is a certificated employee of the Los Angeles Unified School District. He is paid on a monthly basis for services rendered as a teacher. The district is responsible for its business affairs which includes the payment of teacher's salary. The fact that the district's payroll department proceeded and continued to deduct 50% of petitioner's wages due to an alleged, "Withholding Order For Support" mailed by the Bureau of Family Support Operations, that was unauthorized by law does not invalidate the district's contractual obligation to pay petitioner for services rendered and fore resulting damages, associated with the unlawful garnishment.

UNITED STATES CONSTITUTION
DUE PROCESS VIOLATION

Petitioner have setforth in his complaint that the state of California never established jurisdiction in accordance to its statutes that governs this matter which is Civil Code of Procedure Section 1698.3 and 1699. The records further indicated that the alleged initating state, Mississippi never issued a support order. Consequently, no foreign support order ever existed. Gordon Trask, County Counsel attempted to introduce a demestic judgment, Dollie Mosley v. Edgar Mosley NED 29323 as the judgment that lead to the garnishment of petitioner's wages. This judgment is invalid in that it made the Ohio decree a California judgment without the authority of the statutes that govern these matters.

The respondents acts rise to the point of Fifth and Fourteenth Amendment violations of the United States Constitution in

in that the respondents were acting under the color of state law or as representative of the state of California. Therefore it is the state that is depriving petitioner of his right to the seizure of his property by the state, to be based on the laws of the state. The Fifth and Fourteenth Amendment of the United States Constitution clearly states in pertinent part that:

...nor shall any state de-
deprive any person of life,
liberty, or property, with-
out due process of law ...

due process in this instance would simply mean adherent to statutory procedures that allows for a just and equitable determination of the issues. Petitioner has setforth that the state of California lacked statutory mandated prerequisites to establish jurisdiction in that there is no foreign support judgment. Therefore petitioner is not liable under California statutes. Consequently, the

responds' actions constituted blatant deprivation of due process right under the Fifth and Fourteenth Amendment of the United States Constitution.

UNITED STATES CONSTITUTION
EQUAL PROTECTION VIOLATIONS

The Fourteenth Amendment of the United States Constitution states in pertinent part:

... nor deny to any person within its jurisdiction equal protection...

This segment of the constitution embellish the principle that the laws of the states are intended and directed to treat all of its citizens the same under like circumstances. Petitioner's allegations of equal protection violations stems from the fact that he was denied the statutory mandates that allows for fair and just determination in deciding

whether petitioner was in fact delinquent in child support payments or if he could be made liable under California statutes. California's processing of a claim without first determining the legitimacy of the claim is an obvious violation of equal protection rights secured by the United States Constitution.

A CLAIM HAS BEEN ESTABLISHED
UNDER THE 1983 LAW

Petitioner has set forth that the respondents acted under the color of state law and that as a result of the actions directed toward petitioner, he was deprived of due process and equal protection secured by the United States Constitution under the Fifth, Thirteenth and Fourteenth Amendment. These are the only two essential elements in order to maintain a suit under 42 U.S.C. 1983.

RACIAL DISCRIMINATION

The actions of the respondents constituted racial discrimination in that petitioner was deprived of full and equal benefits of all laws and proceedings of the state of California. Petitioner was denied the opportunity of him being charged with being delinquent in child support payment to be based on the rules and regulations of the state of California. These statutes mandated that documents concerning the allegations are to be verified and that jurisdiction must be established in accordance these rules in order to make person liable under the laws of this state.

In order to maintain a claim under Civil Right Act 1866 now 42 U.S.C. 1981, claimant must show that the conduct of the respondents constituted "disparate treatment". In context of employment discrimination based on race, "disparate

treatment", means simply that on given occasions, one or more employees were treated less favorably because of race, "pattern or practices," means simply a generalized version of this phenomenon; and "disparate impact" means simply that facially neutral policies or decisions have had a different, and adverse impact on employees of a particular race. Goodman v. Lakens Steel Co., D.C. Pa 580 F. Supp. 1114, 1121. Petitioner position is because he was not given the full benefit of the law prior to the seizure of his property that he was treated less favorable because of race. Secondly, that this pattern of deviation for the law while seemingly neutral on the face has an adverse impact on the black race.

CONSPIRACY TO INTERFERE
WITH CIVIL RIGHTS

Petitioner's allegations of conspiracy is based on the premise that the respondents knew that there was no valid court order to garnish his wages. This is substantiated by the fact that under California Civil Code of Procedure 1698.3 it is the duty of the Deputy Attorney General in charge of the case, to notify the court when the process of verification and jurisdiction has been completed. Therefore it can only be concluded that this deviation from the laws that governs this matter was purposely disregarded in order to deprive petitioner of his right to have the illegal garnishment discontinued. The act of knowingly and willfully disregarding the laws is conspiracy in and of itself to deprive petitioner of his rights under state and federal constitutions.

42 U.S.C. 1985

PETITIONER'S STATEMENT

OF RELATED CASES

Petitioner set forth in a motion filed on April 3, 1986, that in accordance to Appellate Rule and Procedures Rule 13(j) that cases, Edgar Mosley v. R. Noel No. 84-6046, DC# 83-5039 is related to Edgar Mosley v. Tom Bartman No. 85-6293 DC# 85-1812. This section of law states that the cases are related if one or more of the following conditions are met:

F.R.A.P. 13(j)1 arises out of the same consolidated cases in the trial court.

F.R.A.P. 13(j)3 involved the same parties as a case now pending in this court or a trial court or agency.

F.R.A.P. 13(j)4 involved the same or closely related issues; or

F.R.A.P. 13(j) 5 involved the same basic transaction or, events as does another pending case; or

F.R.A.P. 13(j)6 have any other similarities of which you think the court should be aware.

The above mentioned cases meets five of the stated conditions however petitioner's motion in the appeals court to have these cases heard at the same time was denied. Consequently petitioner has to file two separate cases where the respondents and the issue presented are similar. Therefore petitioner is asking that both these cases be heard at the same time, as to not waste the court's time and energy.

CONFLICT IN DECISION

TO AFFIRM

The appeals court overlooked the case being dismissed by means of summary judgment as to the issue of notice and discovery. F.R.C.P. 56(c) Consequently,

it can not be determined that there is no genuine issues for trial that would necessitate summary judgment. The United States Supreme Court held in Roller v. Columbia Brocating System 368, US 464, 473, 82 S.Ct 486, 491, 7 L. Ed. 458 that:

Summary Judgment-Triable Issues 2. Federal Civil Rule 56(c) authorizes summary judgment only where the moving party is entitled to summary judgment as a matter of law, where it is quite clear what the truth is, and where no genuine issues remain for trial, the rule does not cut litigant right off to trial by jury if he really have issues to try.

This particular Supreme Court ruling holds that summary judgment can only be proper when litigant has been afforded all the procedural due process rights, leaving doubt as to any genuine issues that are

triable. In Druggist Ass'n v. Kaiser
Foundation Health Plan 662 F. 2d 641
(9th Cir. 1981) the Ninth Circuit Court
of Appeals held:

Federal Civil Procedure 3553
"Before summary judgment may
be entered against a party,
notice that the motion is
pending and adequate opportunit-
y to respond is requirement
that sufficient time be afford-
ed for discovery necessary to
develop facts essential to
justify opposition to the
motion. Fed Rule Civ. Proc.
56(c)

On June 6, 1985, the motion to dismiss
by respondents, was set originally for June
17, 1985, however the respondents asked and
was granted an continuance to July 29, 1985,
by means of MINUTE ORDER, from the court.
Respondents were ask to submit a brief dis-
coussing the causes and constitutionality
that lead to the garnishment of petition-
er's wages. On June 35, 1985, it was

ordered by the court that there be no oral arguments. On July 8, 1985, the respondents submitted their brief and on July 12, 1985, petitioner submitted his response. On August 16, 1985, petitioner filed for summary judgment. On August 19, 1986, the case was dismissed. Document on file and the docket sheet concerning this matter does not indicate that the district court notified petitioner on June 6, 1985, or at any time prior to the dismissal of the action that a summary judgment was pending. Consequently, there was no opportunity for discovery during the term. The Ninth Circuit Appeal Court additionally held:

Federal Civil Procedure 2491.3
"that parties must be given ample opportunity to conduct discovery on state action", issues before summary judgment would be proper in a civil right action.

This principle of law was substantiated in Wallace v Chuppell 261 F.2d 729, Doiser v. Miami Valley Broadcasting Corp., 656 F. 2d 1121, Mobey v. Reagan 537 F.2d 1036 and Jackson v. Hayakawa 605 F.2d 1121.

Futher the court of appeals for the Ninth Circuit held in Arthur N. Aronsen v. Crown Zellerbach 662 F.2d 584 (9th Cir. 1981)

Federal Civil Procedure 2586,
"On motion for summary judgment, neither an district court nor appeals court is permitted to weigh the evidence, pass credibility, or speculate as to ultimate findings of fact", Fed Rule Civil. Proc. 56

Do to the fact that petitioner was not allow to develop his case by means of proper notice and discovery, it is only speculation as to the findings of fact as they relate to the issues involved.

Therefore, there could not be a determination as to genuine issues that are triable. Consequently, the issues are left in controversy which preclude summary judgment under F.R. C.P. 56(c)

REASON FOR GRANTING THE WRIT

The United States Supreme Court has established the precedent in Pollar v. America Broadcasting Co., supra as the case relate to notice, discovery and triable issues. The Ninth Circuit adherent such principle is clearly set forth in the cases cited. This sudden reversal by the Ninth Circuit is arbitrary and capricious, concerning notice, discovery and genuine issues. Causing it to be in conflict with the United States Supreme Court as well as itself.

CONCLUSION

Petitioner contends that relief should be granted because the district court and the appeals court are in obvious conflict with the Supreme Court, case law, Federal statutes and itself in their decision to affirm.

EDGAR MOSLEY
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91109
Telephone: (818)
791-9263

CERTIFICATE OF SERVICE

On November ~~12~~¹¹ 1986, I served the attached documents entitled, Petition for writ of Certiorari, on the interested parties in this action, by mailing a copy to the following:

Marion Douglas, Deputy County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012

I, the under signed, certify and declare that I am over the age of 18 years and not a party to the within action.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on November 11, 1986, at Los Angeles
California

Harvey S. Johnson
Signature of person making
Service

FOOTNOTE

California Civil Code of Procedure Section 1698.3. Foreign support order; registration; notice to obligor (a) An obligee seeking to register a foreign support order in a court of the state shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this chapter.

(b) Promptly upon registration the clerk of the court shall send, by any form of mail requiring a return receipt from the addressee only, to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. Proof shall be made to the satisfaction of the court that the obligor personally received the notice of regis-

tration by mail or other method of service. A return receipt signed by the obligor shall be satisfactory evidence of such personal receipt. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order

California Civil Code of Procedure
Section 1699(a) Upon registration the registered foreign support orders shall be treated in the same manner as a support order issued by a court of this state...



APPENDIX

App. 1 Exhibit "A"
FILE

July 24, 1986

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDGAR MOSLEY,)	
Plaintiff/Appellant,)	NO. 85-6293
)	DC# CV 85-1812
vs.)	
)	
TOM BARTMAN, RITA)	
WALTERS, JACKIE GOLD)	MEMORANDUM
BERG, JOHN GREENWOOD,)	
LARRY GONZALEZ, HARRY)	
HANDLER, ROBERT BOOKER,)	
PETER E. SCHABARUM,)	
KENNETH HAHN, EDMOND D.)	
ANTONOVICH, IRA REINER,)	
ROBERT PHILIBOSIAN,)	
GEORGE GLIAUDDYS AND)	
NINA PHILLIPS,)	
Defendants/ Appellees.)	

Appeal from the United States
District Court
For the Central District
of California
Honorable Laughlin E. Waters, District
Judge, Presiding
Argued and Submittet June
4, 1986

BEFORE: GOODWIN, TANG, AND FLETCHER,
Circuit Judges

App.2

Mr. Mosley appeals the dismissal of his Section 1983 action for failure to state a claim upon which relief can be granted. We affirm.

Mr. Mosley claims the garnishment of his wages for nonpayment of child support pursuant to foreign judgments (Ohio and Mississippi) violated his civil rights because those judgments had not been registered and authenticated in California as required by Cal. Code Civ. P. Section 1698.3. Thus, he contends the California court lacked jurisdiction.

As this court explained to Mr. Mosley at oral argument, any claimed error or irregularity in the procedure is subject to challenge or correction in the state courts but does not state a claim for relief as a civil rights violation under 42 U.S.C. Section 1983 (1982)

The judgment of the district court dismissing the action is AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDGAR MOSLEY,)	
Plaintiff,)	CV 95-1812
)	
vs.)	
)	ORDER RE DEFENDANTS;
TOM BARTMAN, et al)	MOTION TO DISMISS
)	
Defendants.)	
)	

The defendants' motion to dismiss, originally set for hearing July 29, 1985, was ordered submitted without oral argument by the Court on June 25, 1985. The Court, having considered the papers filed by the parties, particularly those filed in response to the order for further briefing, and good cause appearing therefor, grants the motion for the reasons stated below.

Plaintiff has filed this action under 42 U.S.C. 1983 against , inter alia, the Board of Trustees of the Los Angeles

Unified School District alleging that their garnishment of his wages for non-payment of child support is a violation of his constitutional right to due process.

On March 18, 1976, Dollie Mosley, previously married to defendant Edgar Mosley, obtained a California "Judgment re Domestication of Foreign Decree for Dissolution and Modification therein." As part of this judgment, plaintiff was ordered to pay \$100.00 per month in child support. He was again ordered to pay the \$100.00 per month at a December 22, 1976, hearing on an OSC re contempt. Later, Dollie Mosley filed against plaintiff in Mississippi, and the California court set a hearing on the matter for May of 1980.

At that hearing, which plaintiff attended, plaintiff was yet again ordered to pay \$100.00 per month in child support. In addition, the court set up a payment

App. 5

schedule for the arrearages which had accrued. By March 27, 1984, plaintiff was \$6,834.00 in arrears, according to the court documents attached to the papers in this case. The District Attorney's office filed an affidavit pursuant to California Code of Civil Procedure Section 4383(b), and subsequently the court issued a writ of execution to enforce the May 1980 order.

Mr. Mosley received notice of the garnishment of his wages pursuant to the writ of execution. He is free to challenge that order in the California courts. However, he does not state a claim for relief in this Court under section 1983. Duranceau v. Wallace, 743 F.2d 709 (9th Cir. 1984). Accordingly, the Court hereby dismisses

the action

IT IS SO ORDER

Dated August 19, 1985

Laughlin E. Waters
United States Magistrate
Judge

App. 6

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

EDGAR MOSLEY,
Plaintiff/Appellant.

V.

TOM BARTMAN, RITA WALTERS,
ALAN GERSHMAN, JACKIE
GOLDBERG, JOHN GREENWOOD,
LARRY GONZALEZ, ROBERTA
WEINTRAUB, HARRY HANDLER,
ROBERT BOOKER, PETER E.
SCHABARUM, KENNETH HAHN,
EDMOND D. EDELMAN, DEANE
DANA, MICHAEL D. ANTONOVICH,
IRA REINER, ROBERT PHILIBOSIAN,
GEORGE CLIAUDYS AND NINA
PHILLIPS,
Defendants/Appellees.

85-6293
DC# 85-1812

ORDER DENYING
PETITION FOR
REHEARING

BEFORE: GOODWIN, TANG, AND FLECTHER,
Circuit Judges.

The panel has considered the Petition for rehearing. The Petition is denied.

DATED AUGUST 20, 1986

IN THE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that, Edgar Mosley, the appellant in case no 85-6293 DC# 85-1812 LEW, hereby appeals to the Supreme Court of the United States from the judgment of the United States Court Of Appeals for the Ninth Circuit dated July 24, 1986, rehearing denied by order dated August 20, 1986, affirming the judgment of the United States District Court for the California dated October 3, 1986.

This appeal is taken pursuant to
28 U.S.C. 1254 2&3.

Edgar Mosley